

Draft Document - For Review and Comment
Version 1
June 23, 1998

MEMORANDUM OF UNDERSTANDING
between
USDA-FOREST SERVICE REGION 1
and
ENVIRONMENTAL PROTECTION AGENCY REGION VIII
MONTANA OFFICE
concerning
BLOCK P TAILINGS SITE

RECITALS

- A. Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601 et seq., the President is responsible for responding to releases of hazardous substances to protect the public health or welfare or the environment.
- B. Pursuant to Executive Order 12580 the President delegated authority to conduct various activities under CERCLA, including investigations and response activities (42 U.S.C. 9604) cost recovery (42 U.S.C. 9607) and entering agreements with potentially responsible parties (PRP) to perform investigations (42 U.S.C. 9622(d)(3)), to several executive departments and agencies, including the Environmental Protection Agency (EPA) and the United States Department of Agriculture (USDA).
- C. USDA redelegated its authorities under Executive Order 12580 to the USDA Forest Service (FS) with respect to land and facilities under Forest Service authority. 7 C.F.R. 2.60(a)(40).
- D. The FS manages National Forest System land and is, with certain limitations, delegated the President's CERCLA authority where a release of a hazardous substance is on or the sole source of the release is from a facility under the jurisdiction, custody or control of the FS. Executive Order 12580, secs. 2(e)(1) and 4(b)(1). The FS's CERCLA role is also recognized in various provisions of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). 40 C.F.R. Part 300.
- E. Subject to the delegation to the FS described in the preceding Recital D, the President's CERCLA authority related to National Forest System Land and adjoining private land is generally delegated to EPA. Executive Order 12580, secs. (2)(g) and 4(d). The authority

delegated to EPA includes the President's authority under 42 USC 9606(a) to issue such orders as may be necessary to protect public health and welfare and the environmental (Unilateral Administrative Orders or UAOs). Executive Order 12580, sec. 4(d)(1).

- F. On August 27, 1993, the FS and EPA entered into a Master Memorandum of Understanding (MMOU) regarding coordination and cooperation between the agencies in support of common objectives and interests. The MMOU encourages the development of supplemental agreements to the MMOU, as needed to accomplish joint projects. This Memorandum of Understanding (MOU) is an agreement supplemental to the MMOU.
- G. When releases of hazardous substances occur on or from both private land and National Forest System land, existing CERCLA authority provides the FS and EPA with specific enumerated powers to respond to such releases.
- H. There is a PRP (Doe Run Company) who may be responsible for performing response actions and/or liable for response costs incurred by the United States in responding to releases or threatened releases of hazardous substances at the site.
- I. The FS and EPA have entered into an Administrative Order on Consent (AOC) with the PRP for completion of an EE/CA for the site, including both the private and National Forest System land. EPA is a party to this AOC because part of the site is on private lands.
- J. The inactive Block P tailings site is located within the established boundaries of the Lewis and Clark National Forest in Montana. The site is located on both private land and National Forest System land. The FS manages the National Forest System land in the vicinity of the Site from offices located in Great Falls, Montana. The site is further described in the AOC.
- K. EPA and the FS recognize that for the PRP to complete the EE/CA expeditiously, the agencies must coordinate their respective CERCLA authorities and communicate a unified position to the PRP. Any disputes between the federal agencies require rapid resolution to avoid delaying completion of the EE/CA.
- L. The purpose of the MOU is to provide a framework for the coordination of the roles of each agency in the oversight of the EE/CA and for the resolution of disputes between EPA and the FS in their oversight of the AOC. The FS will be the lead agency for overseeing the preparation of an EE/CA by the PRP.

- M. The EPA and the FS have designated the following positions and/or persons who will be involved with the day to day coordination, communication and decision making regarding performance and oversight of the EE/CA:

FS

Robin Strathy

EPA

Rosemary Rowe

AGREEMENTS

1. The FS will supply the On-Scene Coordinator (OSC).
2. The EPA will provide a Project Manager (EPA PM).
3. If either the FS or the EPA changes the OSC or the EPA PM, the agency making the changes will notify the other as soon as possible.
4. The FS will supply documents, including drafts, and notice of meetings and sampling activities to the State representative.
5. The FS's OSC will coordinate with the EPA PM during the performance of the EE/CA and the administration of the AOC.
 - a. The FS OSC will provide the following to the EPA PM:
 - i. Copies of all documents related to the performance of the EE/CA or the AOC. (The FS OSC and the EPA PC will cooperatively determine the degree and means of the EPA PM's review of documents and decisions other than those listed in paragraph 10 of this MOU.)
 - ii. Reasonable prior notice of, and an opportunity to participate in any scheduled meetings with the FS contractor, the PRP or others.

- iii. Reasonable prior notice of EE/CA activities to take place at the site and an opportunity to participate in oversight of these activities.
 - b. The FS OSC and the EPA PM should communicate regularly, by phone, correspondence and meetings, to review the work status and to resolve any existing or anticipated technical issues.
 - c. The EPA PM should advise the FS OSC regarding any issues and concerns of special interest to the EPA, in addition to those described in this MOU, so that the OSC can communicate or provide requested information to the PRP.
6. The EPA PM will normally provide comments to the FS OSC within 21 calendar days of receipt from the FS of a deliverable from the PRP. If the EPA PM determines that additional time is required to provide comments, the EPA PM will discuss the need for a reasonable amount of additional time (normally 15 days or less) with the FS OSC, as soon as that need is identified.
7. The FS OSC will be the main contact point for the PRP throughout the EE/CA and will communicate joint EPA/Forest Service responses to the PRP. The FS will include all comments submitted by EPA. Should the FS and EPA comments be in disagreement, the FS OSC and EPA PM will meet to discuss and resolve the comments.
8. Resolution of and communication regarding legal issues will be coordinated among EPA counsel and USDA counsel.
9. Informal dispute resolution, through heightened consultation between the FS OSC and the EPA PM, is intended to resolve disputed technical issues between EPA and the FS.
10. The FS and EPA will concur on the following major decision points:
- a. The EE/CA Work Plan and any revisions.
 - b. The Community Relations/Public Involvement Plan.
 - c. The EE/CA Approval Memorandum.
 - d. The EE/CA.
 - e. The Action Memorandum.

11. If the FS OSC and the EPA PM do not reach agreement on a decision point listed in paragraph 10, the issue will be elevated to each agency's management within seven days. The Regional Forester for the Forest Service and the Montana Office Director for EPA shall resolve all disputes.
12. If a situation arises in which either the FS or the EPA believe that stipulated penalties should be imposed on the respondent, the agency making that determination will notify the other party immediately. If the FS OSC and the EPA PM, in consultation with the attorney for each program, cannot agree on whether to pursue stipulated penalties, the procedure described in paragraph 11 will be followed. To the extent that EPA has recovered their costs, collected penalties will go to the FS.
13. Work will continue during dispute resolution, except for work that could potentially prejudice the outcome of the pending dispute.
14. The dispute resolution process described in paragraph 11 of this MOU is separate from the dispute resolution process described in Section XVI of the AOC with the PRP. EPA and the FS shall implement Section XVI of the AOC dispute resolution as follows:
 - a. The FS and EPA will decide disputes raised by the PRP.
 - b. If a disputed issue is one of the key decision points described in Paragraph 10 of this MOU and a dispute arises between the FS and EPA during the AOC dispute resolution process, the EPA may invoke the dispute resolution process under Paragraph 11 of this MOU, unless the issue has already been disputed separately under this MOU. If the AOC and MOU dispute resolution processes are proceeding simultaneously the AOC dispute resolution process may not reach a final decision in a manner inconsistent with the MOU dispute resolution process.
15. The FS and EPA reserve their rights to exercise their rights and authorities under CERCLA, the NCP and applicable Executive Orders, including Executive Order 12580. No provision of this MOU may be used to limit those rights and authorities.
16. This MOU is not a fund obligating document. Any contribution of funds by either the FS or EPA is solely at the discretion of the agency and will be handled in accordance with applicable laws, procedures and agency policies and guidance.

This MOU shall not be deemed to create any right, benefit, or trust obligation, either substantive or procedural, enforceable by any person or entity in any court against the United States, its agencies, its officers, or any other person.

17. This MOU is effective upon the date signed by the last of the parties.
18. This MOU terminates upon completion and concurrence by EPA of the Action Memorandum. Prior to that, this MOU may be terminated or modified only upon the agreement of both parties. A separate MOU may be negotiated for implementation of the selected removal action. Upon the mutual agreement of the FS and EPA, this MOU may be revised and/or extended to cover the implementation of the selected removal action.

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UNITED STATES DEPARTMENT OF AGRICULTURE, FOREST SERVICE

By: _____
Regional Forester
U.S.D.A. Forest Service
Region 1

Date

ENVIRONMENTAL PROTECTION AGENCY

By: _____
John F. Wardell
Director
Montana Office
EPA Region VIII

Date